

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AMERICAN COMMERCE
INSURANCE COMPANY, an
insurance company,

Plaintiff,

ECHO GLEN SUBDIVISION
HOMEOWNER'S ASSOCIATION, a
Washington State non-profit
corporation, and ROSS HILL and
LINDSEY CLAIRMONT, husband
and wife.

Defendants.

COMES NOW, American Commerce Insurance Company (“American Commerce”), through its counsel of record, COLE | WATHEN | LEID | HALL P.C., and presents the following Complaint for Declaratory Action.

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Case No.

COMPLAINT FOR DECLARATORY ACTION - 1

COLE | WATHEN | LEID | HALL, P.C.
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(206) 622-0494/FAX (206) 587-2476

I. PARTIES

1.1 American Commerce is a foreign insurer licensed to conduct business in the State of Washington.

1.2 Echo Glen Subdivision Homeowner's Association ("Echo Glen HOA"), a Washington State nonprofit corporation, is the named Plaintiff in the underlying litigation filed in Spokane County Superior Court, Cause No. 17-2-00472-8. (hereinafter "underlying lawsuit"). Echo Glen HOA's principle place of business is in Spokane County, Washington.

1.3 Defendants Ross Hill and Lindsey Clairmont aka Lindsey Hill (“the Hills”), husband and wife, are named Defendants in the underlying lawsuit. The Hills’ reside in Spokane County, Washington.

II. JURISDICTION

2.1 This Court has subject matter jurisdiction over this action for a declaratory judgment pursuant to 28 U.S.C. § 2201 because an actual justiciable controversy exists between the parties within this Court’s jurisdiction. This action involves a dispute of the application of insurance coverage for a number of claims arising out of alleged injuries to the Echo Glen HOA from September 2016 to the present.

2.2 This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds \$75,000.00, and

1 the action is between citizens of different states. The homeowners' policy has
2 liability limits of \$400,000.00.

3 2.3 This Court has personal jurisdiction over American Commerce
4 because it is a corporation that does business in Washington State. This Court has
5 personal jurisdiction over the Echo Glen HOA because it is a Washington
6 nonprofit corporation engaging in services in Washington State. The Court has
7 personal jurisdiction over the Hills because they are residents of Washington
8 State. Additionally, all of the claims arise out of alleged harm that occurred in the
9 State of Washington.

10 2.4 Venue is proper pursuant to 28 U.S.C. § 1331(a) because the
11 underlying lawsuit (described more fully, *infra*) and the events in the underlying
12 complaint took place in Spokane County, Washington, which is within the judicial
13 district of the United States District Court for the Eastern District of Washington.

III. STATEMENT OF FACTS

15 3.1 On or about February 3, 2016, American Commerce entered into an
16 insurance contract with Lindsay R. Hill for homeowner's insurance.

17 3.2 American Commerce issued its policy of insurance, Policy No.
18 ACH3000375193 (“Policy”). The Policy named Lindsay R. Hill as the named
19 insured, and listed the following residence as the insured property: 4409 S.
20 Parkside Ct., Spokane, WA 99223.

1 3.3 The Policy provided homeowner's insurance. The Policy issued by
2 American Commerce provides coverage pursuant to its terms and conditions, and
3 not otherwise.

4 3.4 On information and belief, the Hills owned and still own the
5 residence located on 4409 S. Parkside Ct., Spokane, WA 99223, located in the
6 Echo Glen Subdivision.

7 3.5 On or about February 9, 2017, the Echo Glen HOA filed a Complaint
8 for Damages in Spokane County Superior Court against the Hills, Bunker Steel
9 Buildings, Bunker Buildings, Mr. Bunday, and the marital community of the
10 Bundays.

11 3.6 The Complaint alleges that the Hills are in violation of the Echo Glen
12 HOA's Covenants, Conditions and Restrictions ("CC&Rs").

13 3.7 The Echo Glen HOA claims this CC&R violation is a breach of
14 contract, and seeks injunctive and declaratory relief. Specifically, the Complaint
15 alleges that:

16 (a) The Hills live in the Echo Glen Subdivision and are bound by the
17 CC&Rs.

18 (b) The CC&Rs allow the Echo Glen HOA to administer and enforce
19 restrictions on the use of the real property within the subdivision.

- 1 (c) The CC&Rs impose architectural standards that restrict the nature
- 2 and characteristics of structures placed on lots within the subdivision.
- 3 (d) Homeowners are required to submit plans and specifications to the
- 4 Architectural Committee and to receive approval prior to
- 5 commencing construction of any structure in the subdivision.
- 6 (e) The Hills hired Bunker Buildings and Bunday to construct a new
- 7 building on their lot, which is located within the subdivision.
- 8 (f) In violation of the CC&Rs, the Hills and Bunday failed to submit
- 9 plans and information to the Echo Glen HOA prior to starting
- 10 construction on Hills' property.
- 11 (g) The Echo Glen HOA repeatedly asked the Hills, Bunday, and Bunker
- 12 Buildings to submit plans pursuant to the CC&Rs without success.
- 13 (h) The Hills, Bunker Buildings, and Bunday began construction on a
- 14 building that does not comply with the CC&Rs, violates the CC&Rs,
- 15 and has not been approved by the Echo Glen HOA.
- 16 (i) The Echo Glen demanded that construction on the property cease,
- 17 however, construction continues.

18 3.8 One issue to be determined by this Court is whether the Policy
19 provides coverage for the injuries alleged in the underlying lawsuit.

1 3.9 The position of American Commerce on these issues is that the
2 Policy did not provide coverage for the losses claimed in the underlying lawsuit.
3 American Commerce maintains this position based on the following:

4 (a) The Policy specifically excludes damages caused intentionally by an
5 “insured”.

6 (b) The Complaint in the underlying lawsuit does not allege any claims
7 of property damage or bodily injury.

8 (c) The Complaint in the underlying lawsuit does not allege any covered
9 personal injuries.

10 3.10 Furthermore, it is position of American Commerce that the insureds
11 do not have any first-party coverage with American Commerce for any potential
12 remediation that will need to occur, including the tear down of the structure,
13 debris removal, and/or the replanting of any trees because the Policy excludes
14 intentional acts and the act of building the structure and potential need to tear
15 down the same is a result of an intentional act.

16 3.11 Another issue to be determined in this declaratory judgment action is
17 whether American Commerce has a duty to defend or indemnify the Hills.

18 3.12 It is the position of American Commerce that it has no duty to defend
19 or indemnify the Hills.

1 **WHEREFORE**, Plaintiff American Commerce respectfully requests this
2 Court to grant the following relief:

- 3 1. That this Court determine that the rights and obligations of the parties;
- 4 2. That this Court determine that the Policy does not provide coverage for
5 the loss in the underlying lawsuit;
- 6 3. That the Court determine that American Commerce has no duty to
7 defend or indemnify the Hills in the underlying lawsuit;
- 8 4. That American Commerce recovers its taxable costs and fees;
- 9 5. That American Commerce be granted such other and further relief as the
10 Court deems fit and proper.

11 DATED this 24th day of March, 2017.

12 **COLE | WATHEN | LEID | HALL, P.C.**

13 *s/ Rory W. Leid, III*

14 Rory W. Leid, III, WSBA #25075

15 *s/ Arezou Arefi-Afshar*

16 Arezou Arefi-Afshar, WSBA #44021

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